

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA  
AT ANCHORAGE

\_\_\_\_\_  
Plaintiff(s),  
vs.  
\_\_\_\_\_  
Defendant(s).

CASE NO. 3AN- 5187

SUMMONS AND  
NOTICE TO BOTH PARTIES  
OF JUDICIAL ASSIGNMENT

To Defendant: \_\_\_\_\_

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days\* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented) \_\_\_\_\_, whose address is: \_\_\_\_\_.

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at [www.courts.alaska.gov/forms.htm](http://www.courts.alaska.gov/forms.htm), to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

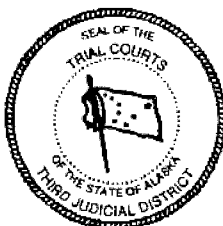
TO: Plaintiff and Defendant

You are hereby given notice that:

- ☒ This case has been assigned to Superior Court Judge SUNDOLK  
and Master \_\_\_\_\_.
- ☐ This case has been assigned to District Court Judge \_\_\_\_\_.

CLERK OF COURT

7-18-14  
Date



By: [Signature]  
Deputy Clerk

I certify that on 7-18-14 a copy of this Summons was ☐ mailed ☒ given to  
☐ plaintiff ☒ plaintiff's counsel along with a copy of the  
☐ Domestic Relations Procedural Order ☐ Civil Pre-Trial Order  
to serve on the defendant with the summons.  
Deputy Clerk [Signature]

\* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

THOMAS C. ASZMUS, )

Plaintiff, )

vs. )

JAY R. McINNIS, and FARMERS' )

INSURANCE GROUP OF )

COMPANIES, )

Defendants. )

Case No. 3AN-14- 8187 CI

COMPLAINT

COMES NOW the Plaintiff, Tom Aszmus, by and through counsel of record, and for his Complaint against Defendants Jay R. McInnis and Farmers' Insurance Group of Companies, states as follows:

1. Plaintiff Thomas C. Aszmus ("Aszmus") is a resident of the State of Alaska.
2. Unless otherwise noted, the events in this action occurred in the Third Judicial District such that venue is appropriate.
3. It is Plaintiff's information and belief that the Farmers' Insurance Group of Companies ("Farmers' Insurance") does business in Alaska such that jurisdiction by an Alaska court is appropriate.
4. It is Plaintiff's information and belief that this matter arises out of acts and omissions of Defendant Jay R. McInnis ("McInnis") related to events in Alaska such that jurisdiction by an Alaska court is appropriate.

*Aszmus v. Farmers Ins Co.*, Case No. 3AN-14- 8187 CI  
Complaint, Page 1 of 4

5. On or about October 7, 2010, Plaintiff Aszmus was injured in a motor vehicle accident as a result of the negligence of Matthew K. Avery ("Avery") and brought suit against Avery in the action entitled Aszmus v. Avery, Case No. 2KB-11-210 CI filed in Kotzebue, Alaska. A true and correct copy of the Complaint in the action is attached as Exhibit A to this Complaint.

6. It is Aszmus' information and belief that Defendant McInnis was an agent of Defendant Farmers' Insurance, that Defendant McInnis sold Avery a motor vehicle insurance policy, Number G0034678880, issued by Defendant Farmers' Insurance, and that McInnis' actions were at all times in the course and scope of his agency relationship with Defendant Farmers' Insurance.

7. It is Aszmus' information and belief that the Policy Number G0034678880 provided coverage for the October 7, 2010 motor vehicle accident and Avery's liability in the Aszmus v. Avery action, including but not limited a duty to defend Avery from the allegations made by Aszmus in that action.

8. It is Aszmus' information and belief that Avery tendered defense of the action to Defendant Farmers Insurance through its agent, Defendant McInnis. A true and correct copy of this tender is attached as Exhibit B to this Complaint.

9. It is Aszmus' information and belief that neither Defendant Farmers' Insurance nor Defendant McInnis acknowledged such tender.

10. Defendant Farmers' Insurance failed to defend Avery in the Aszmus v. Avery action, breaching its duties to Avery under Policy Number G003467880.

11. In order to mitigate the consequences of this failure to defend, Avery entered into a settlement in which he agreed to confess Judgment in favor of Plaintiff Aszmus in the amount of \$3,581,371.85 and assigned his rights against Defendants Farmers Insurance and Defendant McInnis. A true and correct copy of this Settlement Agreement is attached as Exhibit C to this Complaint. Pursuant to the Settlement Agreement, judgment has been entered against Avery. A true and correct copy of this Judgment is attached as Exhibit D to this Complaint.

**SECOND CAUSE OF ACTION AGAINST FARMERS' INSURANCE AND  
MCCINNIS  
BREACH OF FIDUCIARY DUTY**

12. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1 through 11 of this Complaint.

13. By virtue of their sale of the Policy Number G0034678880 to Avery, Defendants Farmers' Insurance and Defendant McInnis owed Avery a fiduciary duty to respond to his tender.

14. The failure of Defendant Farmers' Insurance and Defendant McInnis to respond to Avery's tender constitutes a breach of this fiduciary duty such that they are liable for Avery's losses, including but not limited to the unsatisfied portion of the \$3,581,371.85 judgment and any non-economic loss associated with such breach.

Wherefore, Plaintiff requests the following relief:

1. A judgment against Defendants Farmers' Insurance and McInnis in the amount of Avery's losses.
2. Aszmus' attorneys' fees and costs associated with this action.
3. Such other relief as the Court deems appropriate.

DATED at Anchorage, Alaska this 18 day of July, 2014.

LAW OFFICES OF MARC JUNE  
Attorneys for Plaintiff

By: 

Marc W. June  
ABA# 8011091\

# EXHIBIT A

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
SECOND JUDICIAL DISTRICT AT KOTZEBUE

THOMAS C. ASZMUS,

Plaintiff,

vs.

MATTHEW K. AVERY,

Defendant.

FILED in the Superior Court  
State of Alaska, Second District,  
At KOTZEBUE

AUG 29 2011

Clerk of the Trial Court

By \_\_\_\_\_ Deputy

Case No. 2KB-11- 210 CI

COMPLAINT

COMES NOW the Plaintiff, Tom Aszmus, by and through counsel of record, and for his Complaint against Defendant Matthew K. Avery, states as follows:

FIRST CAUSE OF ACTION  
NEGLIGENCE

1. Plaintiff Thomas C. Aszmus ("Aszmus") is a resident of the state of Alaska.
2. It is Plaintiff's information and belief that Defendant Matthew K. Avery ("Avery") is a resident of the state of Alaska.
3. It is Plaintiff's information and belief that Alaska Interstate Construction, LLC ("AIC") is a corporation doing business in Alaska.
4. This matter arises out an incident in Kotzebue, Alaska such that venue is proper.
5. On or about October 7, 2010, Plaintiff Aszmus was employed by AIC to perform work in Kotzebue, Alaska. On or about October 7, 2010, at a time outside of

working hours, Plaintiff Aszmus was a passenger in a motor vehicle described as a "Yamaha Rhino" operated by Defendant Avery.

6. Defendant Avery negligently operated the "Yamaha Rhino" causing the vehicle to overturn. Such negligence includes, but is not limited to, being intoxicated, driving recklessly and driving without due regard to speed, the road conditions, and the driving characteristics of the vehicle.
7. As a result of such negligence, Plaintiff Aszmus suffered serious injury, including but not limited to his right arm.
8. As a result of such negligence, Plaintiff Aszmus has been damaged in the form of past and future medical expenses, past and future loss of income and non-economic loss in an amount to be proven at trial but in excess of \$100,000.

### SECOND CAUSE OF ACTION PUNITIVE DAMAGES AGAINST AVERY

9. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1 through 10 above.
10. At all relevant times, Defendant Avery acted recklessly and with extreme indifference to the safety of others such that punitive damages are appropriate. Such actions include but are not limited to being intoxicated.

### PRAYER FOR RELIEF

WHEREFORE Plaintiff Aszmus requests the following relief:

1. A judgment against defendant in an amount to be proven at trial but in excess of \$100,000.

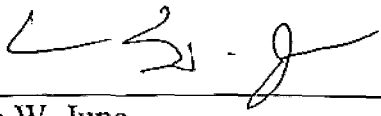


Law Offices of Marc June  
807 G Street, Suite 150  
Anchorage, Alaska 99501  
Telephone 907-277-5234 Facsimile 907-277-9120

2. Prejudgment interest, costs, and full attorneys' fees pursuant to AS 09.60.070.
3. Such other relief as the Court deems appropriate.

DATED at Anchorage, Alaska this 22 day of August, 2011.

LAW OFFICES OF MARC JUNE  
Attorneys for Plaintiff

By:   
Marc W. June  
ABA# 8011091

# EXHIBIT B

**INGALDSON, MAASSEN &  
FITZGERALD, P.C.**

Lawyers

813 West Third Avenue  
Anchorage, Alaska 99501-2001  
Telephone (907) 258-8750 Facsimile (907) 258-8751

Peter J. Maassen  
William H. Ingaldson  
Kevin T. Fitzgerald  
Stuart C. Rader  
Jim M. Boardman

April 27, 2012

**VIA CERTIFIED MAIL, RETURN RECEIPT**  
**REQUESTED AND VIA FACSIMILE: 480-813-2731**

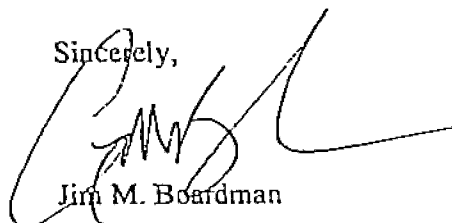
Jay R. McInnis, LUTCF  
522 N. Gilbert Rd., # 106  
Gilbert, AZ 85234

Re: *Aszmus v. Avery*  
DOL: 10-7-2010  
Claimant: Thomas C. Aszmus  
Policy No. G00 3467888 00  
Our File No.: 0074.003

Dear Mr. McInnis:

Our client Matthew K. Avery was recently served with a complaint in the above captioned matter. Mr. Avery was sued by a passenger that was traveling with him as a result of an auto accident. A copy of the complaint is attached. We would appreciate it if you could forward the complaint to the carrier for the above policy and we request that Farmers defend and indemnify Mr. Avery in the above lawsuit as he is a named insured on the policy. If you have any questions, please don't hesitate to contact me.

Sincerely,



Jim M. Boardman

JMB:car

Enclosure  
cc w/encl.: Matt Avery  
Marc June

EXHIBIT B  
PAGE 1 OF 6  
Exhibit 1, Page 11 of 33

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
SECOND JUDICIAL DISTRICT AT KOTZEBUE

THOMAS C. ASZMUS,

Plaintiff,

vs.

MATTHEW K. AVERY,

Defendant.

**COPY**

Case No. 2KO-11-0021 ET CI

COMPLAINT

COMES NOW the Plaintiff, Tom Aszmus, by and through counsel of record, and for his Complaint against Defendant Matthew K. Avery, states as follows:

FIRST CAUSE OF ACTION  
NEGLIGENCE

1. Plaintiff Thomas C. Aszmus ("Aszmus") is a resident of the state of Alaska.
2. It is Plaintiff's information and belief that Defendant Matthew K. Avery ("Avery") is a resident of the state of Alaska.
3. It is Plaintiff's information and belief that Alaska Interstate Construction, LLC ("AIC") is a corporation doing business in Alaska.
4. This matter arises out an incident in Kotzebue, Alaska such that venue is proper.
5. On or about October 7, 2010, Plaintiff Aszmus was employed by AIC to perform work in Kotzebue, Alaska. On or about October 7, 2010, at a time outside of

Aszmus v. Avery, Case No. 2KO-11-\_\_\_\_\_, CI  
Complaint, Page 1 of 1

Law Office of Marc June  
807 A Street, Suite 130  
Anchorage, Alaska 99501  
Telephone 907-277-5134 Facsimile 907-277-9120

EXHIBIT B

PAGE 2 OF 60

working hours, Plaintiff Aszmus was a passenger in a motor vehicle described as a "Yamaha Rhino" operated by Defendant Avery.

6. Defendant Avery negligently operated the "Yamaha Rhino" causing the vehicle to overturn. Such negligence includes, but is not limited to, being intoxicated, driving recklessly and driving without due regard to speed, the road conditions, and the driving characteristics of the vehicle.
7. As a result of such negligence, Plaintiff Aszmus suffered serious injury, including but not limited to his right arm.
8. As a result of such negligence, Plaintiff Aszmus has been damaged in the form of past and future medical expenses, past and future loss of income and non-economic loss in an amount to be proven at trial but in excess of \$100,000.

**SECOND CAUSE OF ACTION  
PUNITIVE DAMAGES AGAINST AVERY**

9. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1 through 10 above.
10. At all relevant times, Defendant Avery acted recklessly and with extreme indifference to the safety of others such that punitive damages are appropriate. Such actions include but are not limited to being intoxicated.

**PRAYER FOR RELIEF**

WHEREFORE Plaintiff Aszmus requests the following relief:

1. A judgment against defendant in an amount to be proven at trial but in excess of \$100,000.

*Aszmus v. Avery*, Case No. 2KO-11-\_\_\_\_\_ CI  
Complaint, Page 2 of 3

Law Offices of Marc Juma

807 G Street, Suite 150

Anchorage, Alaska 99501

Telephone 907-271-5234 Facsimile 907-271-9120

EXHIBIT B

PAGE 3 OF 6

2. Prejudgment interest, costs, and full attorneys' fees pursuant to AS 09.60.070.
3. Such other relief as the Court deems appropriate.

DATED at Anchorage, Alaska this 22 day of August, 2011.

LAW OFFICES OF MARC JUNE  
Attorneys for Plaintiff

By: [Signature]  
Marc W. June  
ABA# 8011091

LAW OFFICES OF MARC JUNE  
807 G Street, Suite 150  
Anchorage, Alaska 99501  
Telephone 907-277-5334 Facsimile 907-277-9120

*Atticus v. Avery*, Case No. 2KO-11-\_\_\_\_\_ CI  
Complaint, Page 3 of 3

EXHIBIT B

PAGE 4 OF 6

Exhibit 1, Page 14 of 33

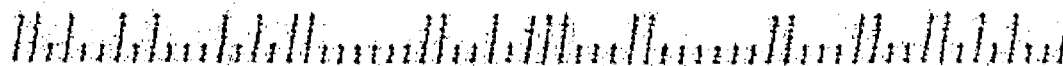
UNITED STATES POSTAL SERVICE

First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

® Sender: Please print your name, address, and ZIP+4 in this box ®

Jim M. Boardman  
Ingaldson, Maassen & Fitzgerald  
813 W. 3rd Ave.  
Anchorage, AK 99501

74-3



12:11 p.m. 03-10-2014

6/7

**SENDER: COMPLETE THIS SECTION**

- ☒ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jay R. McInnis LUTCF  
522 N. Gilbert Rd #106  
Gilbert, AZ 85234

2. Article Number

(Transfer from service label)

7010 1870 0001 0421 1405

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

*[Signature]*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

*McInnis*

C. Date of Delivery

*4/30/12*

D. Is delivery address different from Item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

EXHIBIT

*B*



# EXHIBIT C

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

SECOND JUDICIAL DISTRICT AT KOTZEBUE

THOMAS C. ASZMUS,

Plaintiff,

vs.

MATTHEW K. AVERY,  
ALASKA INTERSTATE  
CONSTRUCTION, LLC

Defendants.

Case No. 2KB-11-210 CI

MATTHEW K. AVERY,

Third-Party Plaintiff,

vs.

YAMAHA MOTOR CORPORATION,  
USA., YAMAHA MOTOR  
MANUFACTURING CORPORATION  
OF AMERICA AND YAMAHA  
MOTOR CO., LTD.,

Third-Party Defendants.

SETTLEMENT AGREEMENT

This is a Settlement Agreement entered into between Plaintiff Thomas C. Aszmus ("Aszmus") and Defendant Matthew K. Avery ("Avery"). In entering into the Settlement Agreement, the parties acknowledge that the following facts are true.

*Aszmus v. Avery*, Case No. 2KB-11-210 CI  
Settlement Agreement

Page 1 of 6

EXHIBIT C

### Recitals

1. Aszmus was seriously injured in a motor vehicle accident occurring on or about October 7, 2010.
2. The motor vehicle accident was caused by the negligence of Avery.
3. Aszmus subsequently brought suit against Avery in an action entitled Aszmus v. Avery et al, Case No. 2KB-11-210 CI.
4. Avery believes he had motor vehicle insurance coverage through a Farmers' Insurance Group of Companies purchased through Agent Jay R. McInnis, LUTCF, 522 N. Gilbert Rd, # 106, Gilbert, AZ. 85234, Policy Number G00346788800 or a policy subsequently purchased through the same agent.
5. Avery tendered defense of Aszmus v. Avery et al, Case No. 2KB-11-210 CI by certified mail, restricted delivery to Farmers' Insurance c/o Agent Jay R. McInnis.
6. Neither Jay R. McInnis nor any representative of the Farmers' Insurance Group of Companies ever acknowledged Avery's tender of defense or made any attempt to defend Avery against the allegations made in Aszmus v. Avery et al, Case No. 2KB-11-210 CI.
7. In defending the claims made against him in Aszmus v. Avery et al, Case No. 2KB-11-210 CI, Avery has been represented by counsel and has had adequate and full opportunity to fully assess his liability in Aszmus v. Avery et al, Case No. 2KB-11-210 CI and Aszmus' losses resulting from Avery's actions.
8. The claims against Avery were defended under reservation of rights by Colony Insurance Company. Avery and Aszmus explicitly acknowledge that Colony Insurance Company has fully satisfied its defense and indemnity obligations.
9. Aszmus has entered into a Settlement Agreement and Release of All Claims with Alaska Interstate Construction, LLC. pursuant to which

*Aszmus v. Avery*, Case No. 2KB-11-210 CI  
Settlement Agreement

Aszmus will be paid \$755,000 in partial satisfaction of Avery liability to Aszmus.

10. Aszmus and Avery wish to resolve the remainder of their dispute on the following terms.

### Agreement

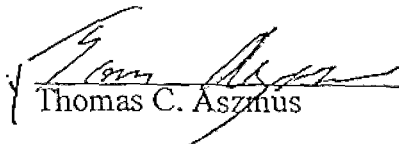
1. Avery agrees to confess judgment after action in favor of Aszmus in the amount of \$2,878,000, plus prejudgment interest, Alaska from October 7, 2010 through March 31, 2014, and Civil Rule 82 attorneys' fees. Avery acknowledges this amount to be 3,581,371.85 through March 31, 2014.
2. Aszmus agrees that, upon receipt of \$755,000 from Defendant Alaska Interstate Construction, LLC, the Restitution Order in 2KB-10-00584CR shall be deemed satisfied. Additionally, Aszmus covenants not to execute on the above Judgment against Avery or assign any right to execute on such Judgment to any other person or entity.
3. Avery hereby assigns whatever claims he may have in relation to the Farmers Insurance Group, Coast National Insurance Co., Jay R. McInnis LUTCF, and any other person or entity bearing legal responsibility for failing to defend Avery in Aszmus v. Avery et al, Case No. 2KB-11-210 CI. No claims are being assigned for the parties released in the Settlement Agreement and Release of All Claims with Alaska Interstate Construction, LLC.
4. Aszmus agrees to restrict further efforts to satisfy the Judgment to prosecution of the claims assigned in the preceding paragraph and further covenants not to execute against any other assets of Avery beyond the payment of \$755,000 by Defendant Alaska Interstate Construction, LLC.
5. The parties agree that time is of the essence in completing this Settlement Agreement and both Avery and Azmus agree to cooperate in preparing such additional documents as are necessary to carry out the intent of this Settlement Agreement.

*Aszmus v. Avery*, Case No. 2KB-11-210 CI  
Settlement Agreement

6. Avery's current residence is 1442 West 25th Ave., Unit E, Anchorage, Alaska 99503. Avery's current phone number is (480) 266-8300. Avery's email address is kaleavery@hotmail.com. Avery agrees to advise Aszmus in the event of any change in this information.
7. Other than as stated in this Settlement Agreement, neither Aszmus nor Avery has made representations to the other party
8. This Settlement Agreement shall be construed according to Alaska law with jurisdiction and venue for any disputes being the Superior Court for the Third Judicial District of Alaska.
9. Aszmus agrees to defend, indemnify and hold harmless Avery, his attorneys, representatives and Colony Insurance Company from any claims, cross-claims, counterclaims, third-party claims or fault allocation proceedings directed against them in any way related to the assignment of claims against Farmers Insurance Group, Coast National Insurance Co., Jay R. McInnis LUTCF, and any other person or entity bearing legal responsibility for failing to defend Avery in Aszmus v. Avery et al, Case No. 2KB-11-210 CI.
10. This Settlement Agreement can be executed in counterparts.
11. This Settlement Agreement represents the complete agreement of the parties regarding resolution of claims asserted in Aszmus v. Avery et al, Case No. 2KB-11-210 CI.

*Aszmus v. Avery*, Case No. 2KB-11-210 CI  
Settlement Agreement

DATED at Anchorage, Alaska this 8 day of April, 2014.

  
Thomas C. Aszmus

SUBSCRIBED AND SWORN to before me this 8 day April, 2014.

  
NOTARY PUBLIC IN AND FOR ALASKA  
My Commission Expires: 6/29/17

DATED at Anchorage, Alaska this \_\_\_\_\_ day of April, 2014.

\_\_\_\_\_  
Matthew K. Avery

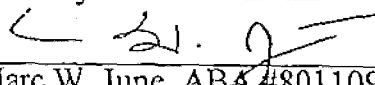
SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of April, 2014.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR ALASKA  
My Commission Expires: \_\_\_\_\_

Law Offices of Marc June  
807 G Street, Suite 150  
Anchorage, Alaska 99501  
Telephone 907-277-5234 Facsimile 907-277-9120


Approved as to Form.

Law Office of Marc June  
Attorneys for the Plaintiff

  
Marc W. June, ABA #8011091

Approved as to Form.

Ingaldson, Fitzgerald, P.C.  
Attorneys for the Defendant

  
William H. Ingaldson, ABA #8406030

*Asimus v. Avery*, Case No. 2KB-11-210 CI  
Settlement Agreement

Page 6 of 6

EXHIBIT C

DATED at Anchorage, Alaska this \_\_\_\_\_ day of April, 2014.

\_\_\_\_\_  
Thomas C. Aszmus

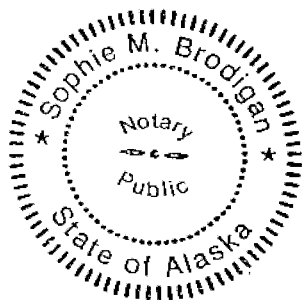
SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day April, 2014.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR ALASKA  
My Commission Expires: \_\_\_\_\_

DATED at Anchorage, Alaska this 11<sup>th</sup> day of April, 2014.

\_\_\_\_\_  
Matthew K. Avery

SUBSCRIBED AND SWORN to before me this 11<sup>th</sup> day of April, 2014.



\_\_\_\_\_  
Sophie M. Brodigan  
NOTARY PUBLIC IN AND FOR ALASKA  
My Commission Expires: 02/01/18



Law Offices of Marc June  
807 G Street, Suite 150  
Anchorage, Alaska 99501  
Telephone 907-277-5234 Facsimile 907-277-9120

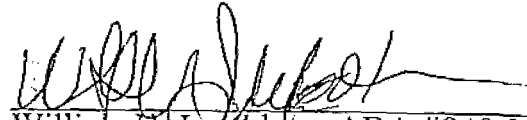
Approved as to Form.

Law Office of Marc June  
Attorneys for the Plaintiff

Marc W. June, ABA #8011091

Approved as to Form.

Ingaldson, Fitzgerald, P.C.  
Attorneys for the Defendant

  
William H. Ingaldson, ABA #8406030

*Aszmus v. Avery*, Case No. 2KB-11-210 CI  
Settlement Agreement

DATED at Anchorage, Alaska this \_\_\_\_\_ day of April, 2014.

\_\_\_\_\_  
Thomas C. Aszmus

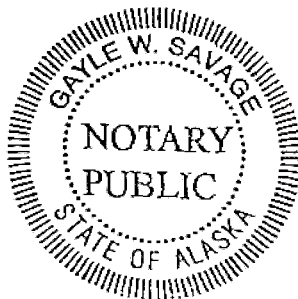
SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day April, 2014.

NOTARY PUBLIC IN AND FOR ALASKA  
My Commission Expires: \_\_\_\_\_

DATED at Anchorage, Alaska this 25 day of April, 2014.

\_\_\_\_\_  
Matthew K. Avery

SUBSCRIBED AND SWORN to before me this 25<sup>th</sup> day of April, 2014.



\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR ALASKA  
My Commission Expires: \_\_\_\_\_

Aszmus v. Avery, Case No. 2KB-11-210 CI  
Settlement Agreement

Law Offices of Marc June

807 G Street, Suite 150

Anchorage, Alaska 99501

Telephone 907-277-5234 Facsimile 907-277-9120

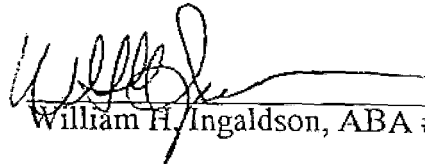
Approved as to Form.

Law Office of Marc June  
Attorneys for the Plaintiff

Marc W. June, ABA #8011091

Approved as to Form.

Ingaldson, Fitzgerald, P.C.  
Attorneys for the Defendant



William H. Ingaldson, ABA #8406030

*Aszmus v. Avery*, Case No. 2KB-11-210 CI  
Settlement Agreement

# EXHIBIT D

Law Offices of Marc June  
807 G Street, Suite 150  
Anchorage, Alaska 99501  
Telephone 907-277-5234 Facsimile 907-277-9120

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
SECOND JUDICIAL DISTRICT AT KOTZEBUE

THOMAS C. ASZMUS,  
Plaintiff,

vs.

MATTHEW K. AVERY,  
ALASKA INTERSTATE  
CONSTRUCTION, LLC

Defendants.

Case No. 2KB-11-210 CI

MATTHEW K. AVERY,

Third-Party Plaintiff,

vs.

YAMAHA MOTOR CORPORATION,  
USA, YAMAHA MOTOR  
MANUFACTURING CORPORATION  
OF AMERICA AND YAMAHA  
MOTOR CO., LTD.,

Third-Party Defendants.

CONFESSION OF JUDGMENT AFTER ACTION

Comes now, Matthew K. Avery, and hereby confesses judgment in favor of Plaintiff Thomas C. Aszmus in the amount of \$3,581,371.85, accruing interest at a rate of 3.75% annually from March 31, 2014.

*Aszmus v. Avery*, Case No. 2KB-11-210 CI  
Confession of Judgment

EXHIBIT

D

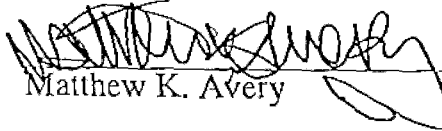
Page 1 of 3

Case 3:14-cv-00166-SLG Document 1-1 Filed 09/02/14 Page 29 of 33

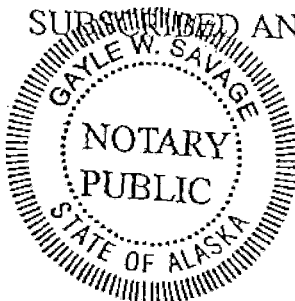
Exhibit 1, Page 29 of 33

PAGE 1 OF 5

DATED at Anchorage, Alaska this 25 day of April, 2014.

  
Matthew K. Avery

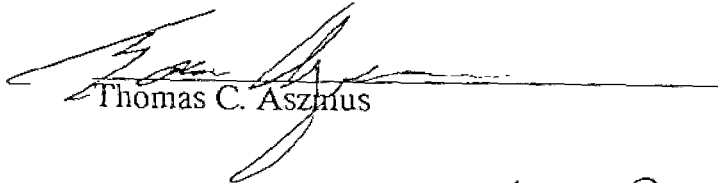
SUBSCRIBED AND SWORN to before me this 25<sup>th</sup> day of April, 2014.



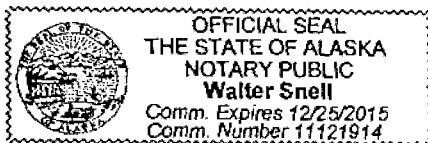
  
NOTARY PUBLIC IN AND FOR ALASKA  
My Commission Expires: \_\_\_\_\_

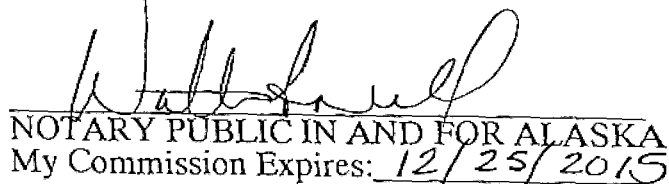
Plaintiff Thomas C. Aszmus hereby assents to entry of the above judgment

DATED at Anchorage, Alaska this 10<sup>th</sup> day of June, 2014.

  
Thomas C. Aszmus

SUBSCRIBED AND SWORN to before me this 10<sup>th</sup> day of June, 2014.



  
NOTARY PUBLIC IN AND FOR ALASKA  
My Commission Expires: 12/25/2015

Aszmus v. Avery, Case No. 2KB-11-210 CI  
Confession of Judgment

ORDER

IT IS SO ORDERED.

DATED at Kotzebue, Alaska this \_\_\_\_ day of April, 2014.

\_\_\_\_\_  
Paul A. Roetman, Superior Court Judge

CERTIFICATE OF SERVICE

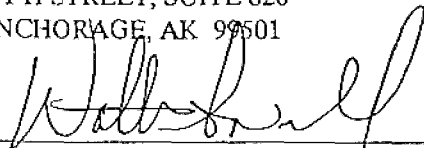
On this 16<sup>th</sup> day of April, 2014, a true and correct copy of the foregoing document was served on the following attorneys of record by:

X Mail \_\_\_ Fax \_\_\_ Hand-Delivery

JAMES M. BOARDMAN, ESQ.  
INGALDSON, MAASSEN & FITZGERALD, P.C.  
813 WEST 3<sup>RD</sup> AVENUE  
ANCHORAGE, AK 99501

DAVID K. GROSS  
BIRCH, HORTON, BITTNER & CHEROT  
1127 W. 7<sup>TH</sup> AVENUE  
ANCHORAGE, ALASKA 99501

JOHN B. THORSNESS  
CLAPP, PETERSON, TIEMESSEN,  
THORSNESS, & JOHNSON, PC  
711 H STREET, SUITE 620  
ANCHORAGE, AK 99501

  
\_\_\_\_\_  
Walt Snell

*Aszmus v. Avery*, Case No. 2KB-11-210 CI  
Confession of Judgment

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
SECOND JUDICIAL DISTRICT AT KOTZEBUE

THOMAS C. ASZMUS,

Plaintiff,

vs.

MATTHEW K. AVERY,  
ALASKA INTERSTATE  
CONSTRUCTION, LLC

Defendants.

JUN 27 2014

Case No. 2KB-11-210 CI

MATTHEW K. AVERY,

Third-Party Plaintiff,

vs.

YAMAHA MOTOR CORPORATION,  
USA., YAMAHA MOTOR  
MANUFACTURING CORPORATION  
OF AMERICA AND YAMAHA  
MOTOR CO., LTD.,

Third-Party Defendants.

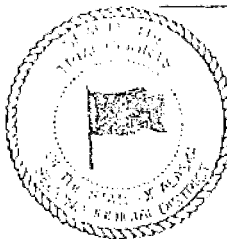
**JUDGMENT PURSUANT TO CONFESSION**

Pursuant to the Confession of Judgment After Action, judgment is hereby  
entered against Matthew K. Avery and in favor of Thomas C. Aszmus in the  
amount of \$3,581,371.85.

Interest on the judgment shall accrue at a rate of 3.75%. *Annually from*  
*March 31, 2014.*



DATED at Kotzebue, Alaska this 24<sup>th</sup> day of June PA RT



Paul A. Roetman, Superior Court Judge

**CERTIFICATE OF SERVICE**

On this \_\_\_\_ day of May, 2014, a true and correct copy of the foregoing document was served on the following attorneys of record by:

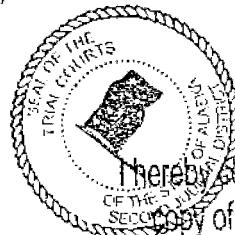
\_\_\_\_ Mail \_\_\_\_ Fax \_\_\_\_ Hand-Delivery

James M. Boardman  
Ingaldson, Maassen & Fitzgerald, P.C.  
813 W. 3<sup>rd</sup> Avenue  
Anchorage, AK 99501

David K. Gross  
Birch Horton Bittner & Cherot  
1127 West 7<sup>th</sup> Avenue  
Anchorage, AK 99501

John B. Thorsness  
Clapp, Peterson, Tiemessen, Thorsness &  
Johnson, LLC  
711 H Street, Suite 620  
Anchorage, AK 99501

\_\_\_\_\_  
Walter Snell



Thereby certify that this is a true and correct copy of the original on file in my office.

**ATTEST:**  
Clerk of the Trial Courts at Kotzebue  
By KB 6/25/14  
Deputy Date

I certify that on 6/25/14  
copies of this document were sent to: Marc W. June  
CLERK KB David K. Gross  
James M. Boardman